

**Georgia Commission on Child Support
Statute Review Committee
Minutes of Meeting: July 28, 2017**

Present:

Katie Connell
Stephen Harris
Judge Amanda Baxter
Judge Michael Key
Judge Shawn LaGrua
Elaine Johnson, staff
Pat Buonodono, staff attorney
Bruce Shaw, Staff

Guests:

Judge Rob Leonard
Rep. Regina Quick
Byron Cuthbert, DCSS
Ashley Sills, DCSS
Erica Thornton, DCSS
Susan Cosby, DCSS
Johanna Keel, FLIC
Brenda Jones, Troup Co.
Tyler Mashburn, AOC
Ryan Bradley, DCSS – on phone
Jason Naunas, AG's office

Katie Connell called the meeting to order. Introductions were made.

Minutes from the meeting of 9/28/16 were unanimously approved.

Old Business:

SB 137 – Pat Buonodono – the new law became effective July 1st. We submitted articles to the Family Law Review, GODR Newsletter, we are offering training to everyone we can train. We made two presentations at the Council of Superior Court Judges' Conference earlier on July 25th. Planning some regional trainings, but having difficulty finding space to do the trainings. Will reach out to judges in each region of the state.

Official statute just published – can access it at www.legis.ga.gov.

The Superior Court Judges gave feedback at the conference, mostly about the multiple worksheet provisions. They don't like it because pro se litigants will have difficulty with the multiple worksheets. Many judges felt the use of multiple worksheets should have been optional and based on a shorter period of time. But many stood up and said change is hard but people will get used to it. It may in the long run keep the number of modifications down. Many expressed concern that when the case starts out with young children, income and circumstances will change by the time one of them ages out. But nothing precludes the filing for a modification. Some of the judges didn't even know about it yet, so they were very surprised. Several judges said the online calculator is so easy that if you use it, it will be easy to do

multiple worksheets. All of the judges were happy with the change that allows work related child care to be handled outside of the worksheet.

Ms. Connell asked if any of the feedback indicated that the Committee should revisit the statute. Staff has received several calls in which people state they believe we are requiring “per child” support orders. Pat is concerned that the language isn’t quite clear, and referred everyone to a one page sheet with some proposed language to clarify Section 1-4 of SB 137. The Committee elected to take the proposed language under advisement as Jill Travis is on vacation and has not yet seen it.

Judge LaGrua expressed concern about taking a statute back to the legislature just to change one thing – it opens it up to more. Pat believes the clarification is needed – but we will have to make changes anyway based on the federal “Final Rule.”

Pat is going to seek Jill’s feedback on the proposed change for the next meeting, and we will seek feedback from the Family Law Section.

Judge Rob Leonard suggested we have the calculator automatically do the step down calculations. Staff agreed to explore it with the vendor and the technology committee.

There was discussion about the calculator and connectivity in the courthouses, and that we need to ask the Calculator Committee to select a date certain that the Excel calculator will no longer be available. The Calculator Committee meeting is scheduled for late August.

Stephen Harris spoke about the federal government’s new Final Rule for child support. State agencies are regulated by HHS/OCF/OCSE, required by Social Security Administration to comply with federal rules. The compliance is tied to funding provided by the federal government and TANF funds. Largest change to rules since the 1990’s, and was released December 2016 and took effect January 20, 2017. A lot of the rule applies to the IV-D agency only. But some touch on the guidelines. Timeline – essentially, July 2018 to make changes to guidelines. We all looked at a document he provided that shows proposed changes based on the Final Rule. DHS will need to pursue changes for next legislative session. Hoping CSC will be on board – will affect everybody, not just DCSS cases. Includes modifications when obligors are incarcerated, so that will affect the Criminal Justice Reform Council as well. Asking this Committee and the Commission as well to help make the appropriate changes to the guidelines to meet the federal requirements. Jill Travis has not yet seen this proposal. Will require investigation into ability to pay support before imputation of income. We also discussed the provision that incarceration cannot be considered voluntary unemployment, and the Staffon case. Everything is now based on “right size orders” and the obligor’s ability to pay. Per Stephen, if child support order is unrealistic, nothing will get paid. Incarceration is added to the definition of involuntary loss of income in subparagraph (a). Judge Key asked if we needed to be in full or substantial compliance with the Final Rule to keep funding intact. There was discussion of reaching out to Justice Boggs and the Criminal Justice Reform Council for a recommendation.

Regina Quick pointed out, under “general principles” – grounds for deviation – proposed language is a policy shift in that deviations have been and are focused on the best interest of the child and only the best interest of the child. Also, defining incarceration as involuntary termination of employment would trigger the retroactivity clause of the modification section when involuntary loss of employment occurs. Language of subparagraph (j) discussed. Discussed Friday v. Friday case – arrears accumulate only based on amount of support determined in modification order, not on original amount, back to date of filing for relief. Galvan says you can’t be held in contempt for that amount. Judge Key noted that incarceration does not appear to be defined in the rule. It would need to be in our guidelines. Judge Baxter pointed out that the rule does not prohibit a judge from using discretion as to ordering support when an obligor is

incarcerated. It simply says a motion to modify can't be dismissed on the ground that the obligor is voluntarily unemployed. Scenario mentioned by Judge Key – a parent beats the children, goes to jail, and then doesn't even have to support them. Jason Naunas pointed out that our statute may need to address specifics of how modification is done – how do you get a prisoner from South GA where he may be incarcerated to a court in North GA where his child support case is. Production orders will work. Katie Connell stated that the NCP may not KNOW to seek a modification – it will likely fall to the IV-D agency to assist prisoners.

Stephen says the Department and the Commissioner will reach out to other people. Katie Connell wants us to be clear that if these changes are necessary because of funding, we want to package it carefully so as not to imply that changes could be made that would make the outcome out of conformance with the law.

The federal rule also changes some of the procedures for doing our federal quadrennial review. Our statute will need to be more specific about imputing income. Stephen went through his proposed changes/comments one by one.

Another provision of the federal rule is that Medicaid and other public insurance programs like Peach Care do comply with the requirement that health insurance be provided for the children.

There is some discussion of whether questions B, C, and D on Schedule E will have to change to specifically address ability to pay. Some discussion of striking that the primary consideration is best interest of child – rule seems to state it should be ability to pay. It can be both, maybe strike “primary.”

Judge LaGrua suggested bringing these changes to the Parental Accountability Court Subcommittee to make them aware of the requirements of the federal rule as well. Judge Burlison is new Chair.

Discussion of next steps re this federal rule and proposed changes – identified need for another meeting and designate who will have conversations with other agencies – Judge LaGrua will reach out to PAC and Justice Boggs to make them aware and see if they have any concerns, put them in touch with Stephen; we need to make sure this language is given to Jill as well. Pat will do so. Stephen is coordinating the effort on behalf of DHS, so is happy to speak with those who have concerns. Put this on our agenda for moving forward – motion – passed. Katie believes we should let FLS know this is what is pending and won't be subject to revision since funding will be an issue. While we usually seek their assistance in the drafting phase, this situation is different.

Judge Leonard serves on the Pattern Jury Committee of the CSCJ and attended this meeting to make our Committee aware of a problem with the jury charges regarding alimony – the statute does not make it clear whether the alimony deviation means alimony from one parent to the other parent of the children for whom support is to be determined, or alimony from a previous marriage. It's in (i)(2)(G). Plus the jury is being instructed to pick an alimony award with no consideration for support, before determining child support. The help button on the calculator does say “not between the parties in this case.”

Rep. Quick stated that Carol Walker and Tina Roddenberry were among those who drafted the statute originally. Elaine suggested we look at the implementation guide.

Trial judges figure out the child support award first – and then figure out if there's money for alimony. Juries are instructed to do it the other way. So there's little money left for child support. Katie will reach out to some of the people from the original Committee to find out what the intent was.

Direction the Committee wants to go – we need to make the statute consistent. Judge Key says we need to consider the legislative intent at the time and think about whether that should be revisited. Next steps:

Katie will talk to some members of the original committee, Elaine will find the implementation guide, and Pat will see if Jill can draft some corrective language.

Proposal to change statute to have ALJ on our Commission. Do we want to do that? Judge Key in favor. Is it potentially advisable to talk to Governor's staff first to make this appointment from one of the seven open positions? Pat will talk to Governor's appointments secretary. Perhaps do it voluntarily now and make it statutory later? We don't have any openings presently.

Next meeting – September, after Labor Day. Send out Doodle Poll.